IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 127 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S. SHAKTI CLEARING AGENCY PVT. LTD.

Versus

M/S. M.M.T.C. LTD.

Appearance:

1. Appeal from Order No. 127 of 2004

MR RD DAVE for Appellant No.

MR SAURABH SOPARKAR for MR CZ SANKHLA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/01/2005

ORAL JUDGEMENT

1. The appellant has preferred this Appeal from Order against the order dated 12/02/2004 passed below Exh.124 application as well as the order dated 08/10/2004 passed below application Exh.92 by the learned Civil Judge (S.D.), Jamnagar in Special Civil Suit No.38 of

2000.

2. The original defendant had claimed the following reliefs as is clear from para 10 page 15 of the petition;

(A) That the Hon'ble Court be pleased to pass appropriate order and direction to the Plaintiff to allow and facilitate the defendant, its agents, servants and/or surveyors appointed by the Insurance Company of the Defendant, to inspect and/or survey the entire stock as mentioned in Para (1) to (vi) in Para (1) and lying under the custody of the Plaintiff in the godown hired by it; for the purpose of determining the quantity, quality and value of the said stocks.

(B) The Plaintiff be also directed to allow the Defendant, its agents, servants and/or the surveyor of their Insurance Company to enter into the godowns, where the stocks are lying and allow them to take the samples from such stocks, to perform test of such stocks and to do all other acts and deeds necessary and expedient for the purpose of obtaining full information and evidence regarding the condition and value of such stocks.

(C) The plaintiff may be directed to facilitate and provide all necessary assistance to surveyors of Insurance Company in meeting with the requirement/finalising salvage formalities. It is thereafter that Insurance Company may be authorised to complete salvage for finalisation of pending insurance claim of defendant.

(D) The Hon'ble Court be pleased to pass any other appropriate and/or necessary orders and directions which are necessary for the interim measures of protection in respect of the property in question."

3. Mr.R D Dave learned advocate for the appellant has contended that arbitration proceedings are pending and therefore the application ought to have been preferred before the Arbitrator. He has further contented that the Civil Court had no jurisdiction in the matter.

4. I have heard learned counsel for the parties and have perused the relevant documents on record. The trial

Court while passing the impugned order has referred to the prayers in para 9 but they are in fact in para 10, page 15 of the petition as referred to hereinabove. The above prayers are for the purpose of claiming insurance of the goods belonging to the defendant. Now, since the original defendant has not filed any counter claim the apprehension of the appellant that the above prayers might be used against him for the purpose of claiming damages is misconceived.

5. Moreover, there is no counter claim by the original defendant and the prayers are only for the purpose of carrying out survey through the insurance agents. No prejudice would be caused to the appellant and the same has been allowed by the trial Court for the purpose of claiming insurance from the Insurance Company. In my opinion, the contention raised by the learned advocate for the appellant is required to be accepted if the documents were to be used against him and if at all the same is required to be used against the appellant, then the respondent is required to prefer the application before the Arbitrator.

6. In above view of the matter, if the original defendant is desirous to prefer such an application then he shall prefer the same before the Arbitrator. This liberty has been given only for the limited purpose of claiming insurance from the Insurance Company in view of the restrained order passed by the trial Court. However, it is made clear that the report of the Court Commissioner, pursuant to the order below Exh.92, shall in no way be applied against the appellant for his claim against the defendant.

7. With the above clarification, this appeal from order stands disposed of with no order as to costs.

(K. S. Jhaveri, J.)
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